In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1003

NATIONAL INDIAN YOUTH COUNCIL, ET AL., PETITIONERS

v.

LOUIS R. BRUCE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

1. This suit was brought in the United States District Court for the District of Utah by the National Indian Youth Council and several students at the Intermountain School at Brigham City, Utah, to require the Secretary of the Interior and others to close the Intermountain School, and for monetary damages. The school is operated by the Bureau of Indian Affairs outside the Navajo Reservation and has been used primarily as a boarding secondary school for Navajo students. The complaint and amended complaint, which range over a variety of administrative problems, primarily allege that the operation of the school is in violation of the Navajo Treaty of 1868, 15 Stat. 667, which requires the government to provide schools within the Reservation, and that the operation of the school violates the constitutional rights of the students—especially their freedom of religion.

The district court in a thorough opinion (Pet. App. B, 1-24), on which we primarily rely, considered the various allegations and dismissed the complaint on the grounds of sovereign immunity, failure to exhaust available administrative remedies, and failure to express the claimed civil rights violations with particularity (Pet. App. B). The court's dismissal was without prejudice to filing a more specific future complaint on the various civil rights issues raised (Pet. App. B, 24). A unanimous panel of the court of appeals affirmed in a written opinion (Pet. App. A, 1-7). Further review is not warranted.

2. Apart from the issues of sovereign immunity, this case was properly dismissed for failure to exhaust, or utilize at all, available administrative remedies. Although full administrative procedures are available in the Department of the Interior for correction of action of officials of the Bureau of Indian Affairs, 25 C.F.R. 2.2, it is uncontested that petitioners have made no attempt to invoke these remedies. Hence, the district court properly dismissed the complaint for failure to exhaust administrative remedies. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51; *McGee* v. *United States,* 402 U.S. 479, 484. See also *Christian* v. *New York State Department of Labor,* No. 72-5704, decided January 21, 1974. Moreover, petitioners are not entitled to damages payable out of the individual assets of the defendants for an alleged failure to provide an adequate education. See *Barr* v. *Matteo,* 360 U.S. 564; *Gregoire* v. *Biddle,* 177 F. 2d 579 (C.A. 2), certiorari denied, 339 U.S. 949; 3 Davis, *Administrative Law Treatise* (1958), Sec. 26.01, pp. 506-513. To the extent that petitioners seek such damages for alleged violations of civil rights, those allegations should be expressed with particularity, and the courts below have not precluded such a claim.

3. Many of the issues raised by petitioners have now become moot, as we are informed by the Department of the Interior that an administrative decision has already been made to phase out Intermountain School as a secondary boarding school for the exclusive use of Navajo children over a three-year period. In furtherance of that decision the ninth grade class was eliminated this school year. Presently under consideration are proposals to change the school into a regional secondary boarding school or a vocational school for older students. The Department also informs us that there are now sufficient on-reservation classrooms for all Navajo children.

CONCLUSION

For the foregoing reasons, the petition for a writ ofdenied.

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MAY 1974.